

FILED
CLERK OF COURT
FEB 28 2006
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Nadine J. Griffin,

Accused, Belligerent Claimant.

CASE NO. 05-CR-10175-WGY

VERIFIED MOVE TO STRIKE
CONCLUSORY WORDS AND
PHRASES FROM INDICTMENT

Fed.R.Crim.P. 7(d)

Nadine J. Griffin

COMES Nadine J. Griffin the Accused Belligerent Claimant, in and on her own behalf, giving notice and moving this Court in indictment No. 05-CR-101750-WGY (see **Docket Item 1**), pursuant to Rule 7(d) of the Federal Rules of Criminal Procedure, for an order striking phrases in paragraphs 6 and 7 as surplusage and duplicitous for any and all of the following reasons to wit:

1.1 Count 1 and 2 of the indictment using the phrase "*did not believe to be true and correct as to every material matter*" is wholly baseless, prejudicial, conclusory, subjective and inflammatory facts not in evidence.

1.2 Count 1 and 2 of the indictment using the phrase "*then and there well knew and believed*" is wholly baseless, prejudicial, conclusory, subjective and inflammatory facts not in evidence.

1.3 Count 1 and 2 of the indictment using the phrase "*a substantial amount of gross*

1 *receipts*" is wholly baseless, prejudicial, conclusory, subjective and inflammatory, fails to
 2 provide an accounting method or disclose the "substantial amount" the accused is
 3 presumed to have omitted.

4 1.4 The Court will find upon review that the indictment misstates the law and misleads the
 5 jury by implying the above statements *arguendo* by Christopher Maietta, facts not in
 6 evidence and yet to be proven contains prejudicial surplusage that must be stricken.

7 **BRIEF AND MEMORANDUM OF THE LAW IN SUPPORT**

8
 9 2.1 Assistant United States Attorney, Christopher Maietta, gave testimony before a grand jury
 10 resulting in the indictment of the accused Nadine J. Griffin. Maietta, aware that the juror, an
 11 average citizen/subject cannot distinguish between giving testimony as if he had first-hand
 12 knowledge or as if he were a third-party informant giving his meaning to the facts
 13 presented.

14 *Pejepscot Ind. Pk. v. Maine Central R.R. Co.*, 215 F.3d 195 (1st Cir. 2000)"[A]ll
 15 words and provisions of statutes are intended to have meaning and are to be given
 16 effect, and no construction should be adopted which would render statutory words
 or phrases meaningless, redundant or superfluous." (quoting *United States v.*
Ven-Fuel, 758 F.2d 741, 751-52 (1st Cir. 1985)

17 2.2 Maietta offered testimony in Counts 1 and 2 of the indictment using the phrase "*did not*
 18 *believe to be true and correct as to every material matter*" a completely baseless,
 19 prejudicial, conclusory, subjective and inflammatory statement of facts not in evidence. As
 20 a matter of law, attorneys can't testify in any case because they are in fact witnesses – they
 21 can offer their theory and philosophy of a case, NOT TESTIMONY.

22
 23 This finding of a continuing investigation, which forms the foundation of the
 24 majority opinion, comes from *statements of counsel* made during the appellate
 25 process. As we have said of other un-sworn statements which were not part of the
 record and therefore could not have been considered by the trial court:
 "Manifestly, [such statements] cannot be properly considered by us in the
 disposition of [a] case." *United States v. Lovasco*, 431 U.S. 783 (1977), 97 S. Ct.
 2044, 52 L. Ed. 2d 752,

1 2.3 Christopher Maietta proceeds (in Count 1 and 2 of the indictment) using the phrase "*then*
 2 *and there well knew and believed*" as to profess having ESP able to access the cerebral
 3 cortex of Nadine J. Griffin to know what was in her mind at the time she signed her
 4 prepared returns. Here again Maietta's statements are completely baseless, prejudicial,
 5 conclusory, subjective and inflammatory statement of facts not in evidence.
 6

7 "No instruction was asked, but, as we have said, the judge told the jury that they
 8 were to regard only the evidence admitted by him, not *statements of counsel*,"
 Holt v. United States, 218 U.S. 245 (1910), 54 L. Ed. 1021, 31 S. Ct. 2,

9 2.4 Maietta, clearly sensationalizing Griffin's acts before the grand jury to be well planned,
 10 thought out and executed with precision – which is hardly the case. As one can assume
 11 without question, this practice is prevalent in 99.9 % of all indictments handed down by a
 12 grand jury: truth is merely a contact sport and the citizen/subject is the prey in this judicial
 13 gulag. This is displayed in Maietta's testimony wherein Counts 1 and 2 of the indictment he
 14 uses the phrase: "*a substantial amount of gross receipts*" failing to disclose any evidence
 15 or foundation for his claim.
 16

17 "After closing arguments, the court instructed the jury that arguments of counsel
 18 were not evidence, the jury's recollection of the evidence controlled and any
 statement of counsel conflicting with its recollection should be ignored," United
States v. Joyner, 191 F.3d 47 (1st Cir. 1999)

19 2.5 One can draw any inference they wish from the statement or phrase "*a substantial amount*
 20 *of gross receipts*" A substantial amount leaves the reader to interpret what their own
 21 definition of a "substantial amount" might be. For example, on a talk show in 2004 – a
 22 sixteen year old mother-to-be was asked how much she believed it would take to raise her
 23 child once it was born; and she responded by stating \$500.00 a month, which she believed
 24 to be a substantial amount of money sufficient to raise the child.
 25

2.6 The teenager's response was in direct relationship to her environment, experience,

1 education and/or the lack thereof. The interpretation of her meaning of a “substantial
2 amount” is relative to her personal understanding, life experiences and how she processes
3 that information in her own mind – no different than a billionaire could considers one
4 hundred thousand dollars as ‘pocket change.’

5 2.7 Furthermore the phrase “*a substantial amount of gross receipts*” could be interpreted to
6 mean the number of pieces of paper in Christopher Maietta’s possession having an
7 undisclosed dollar amount, from an unknown source without any method of authenticating
8 the origin of the instrument or if it has any substantive value relative to Nadine J. Griffin.

9 The courts have consistently ruled that:

10
11 Statements of counsel in brief or in argument are not sufficient for motion to
12 dismiss or for summary judgment, Trinsey v. Pagliaro, D. C. Pa. 1964, 229 F.
Supp. 647.

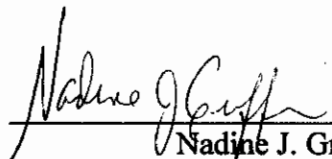
13 2.8 Nadine J. Griffin’s has been prejudiced and compromised at every stage of these
14 proceedings by the actions and inactions of Christopher Maietta. The indictment being
15 factually insufficient, failing to state an offense and making conclusory statements of facts
16 for which he has no first hand knowledge and are not in evidence – requires a non-biased,
17 neutral and impartial arbitrator strike the phrases as referenced herein, or in the alternative
18 show cause why said phrases are not considered testimony subject to being stricken for its
19 inflammatory and conclusory overtones.

20
21 WHEREFORE, the Accused Nadine J. Griffin moves a judicial official this Court for an
22 Order striking paragraph 6 of Count 1 and paragraph 7 of Count 2 containing the phrases
23 referenced in 1.1 “*did not believe to be true and correct as to every material matter*”, 1.2
24 “*then and there well knew and believed*” and 1.3 “*a substantial amount of gross receipts*”
25 from the indictment.

VERIFICATION

I, Nadine J. Griffin, declare under penalty of perjury as a Conscious, Thinking, Feeling, Living, Breathing, Flesh and Blood Sentient Being that the foregoing is true and correct. All Rights retained without recourse.

Executed this 28 day of February, 2006.

Signature: 

Nadine J. Griffin

c/o 36 Center Street, #143

Wolfeboro, New Hampshire [03894]

CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that on the 28, day of February, 2006, service of the foregoing action titled VERIFIED MOVE TO STRIKE CONCLUSORY WORDS AND PHRASES FROM INDICTMENT AND AFFIDAVIT IN SUPPORT was made by certified mail, postage fully prepaid upon the following:

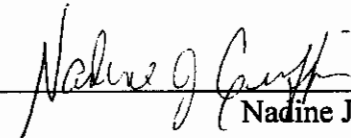
Christopher Maietta
U.S. Dept. of Justice, Tax Division
601 "D" Street, NW, Room 7012
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William Smith, Majority Chief Counsel
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US Committee on the Judiciary
Subcommittee on Administrative Oversight and the Courts
224 Dirksen Senate Office Building
Washington, D.C. 20510

Certified Mail No. 7004 1160 0007 4198 1050

Dated this 28 day of February, 2006.


Nadine J. Griffin